

**Matter of Marilyn Arons, Ruth Watson,
and Parent Information Center of New Jersey, Inc.,**

756 A.2d 867 (Del. 2000), cert. denied, 532 U.S. 1065 (2001)

In an en banc Opinion issued on July 6, 2000, the Supreme Court of Delaware (the “Court”) approved a decision of the Board on the Unauthorized Practice of Law (the “Board”), which concluded that Marilyn Arons, Ruth Watson, and the Parent Information Center of New Jersey, Inc. (the “Appellants”) had engaged in the unauthorized practice of law. On five occasions, the Appellants had represented families of children with disabilities in “due process” hearings held by the Delaware Department of Public Instruction pursuant to the federal Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. Four of these five hearings were handled by Arons, while the other hearing was handled by Watson. Although neither Arons nor Watson is an attorney, both possess special knowledge and training with respect to the problems of children with disabilities.

The Appellants argued that the IDEA permits the representations in which they have engaged and preempts any state-law proscription against the unauthorized practice of law that might otherwise apply. The IDEA provides that any party to a due process hearing “shall be accorded ... the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.”

The matter was submitted to the Board on a stipulation of facts, including transcripts of due process hearings, briefs, oral argument and post-hearing correspondence. On September 24, 1999, the Board issued a written opinion concluding that the IDEA does not authorize the practice of law by non-lawyers, including Appellants, in due process hearings. Following the entry of an appeal by the Appellants, the United States Department of Justice sought leave to appear as an amicus curiae. Leave was granted, and the Department filed a brief in support of the Appellants’ position.

After a detailed analysis of the text of the statute, its history in Congress, and relevant case law interpreting the IDEA, the Court affirmed the Board’s conclusion that the IDEA does not create or imply an equivalence of permissible roles for “counsel” and for “individuals with special knowledge or training.” Also, the Court noted that Congress has explicitly included language in other federal statutes to permit lay representation where such a result was intended. Finally, the Court considered and rejected an interpretation of the IDEA contained in a 1981 Department of Education letter to the State of Washington. In so doing, the Court accorded “modest” deference to the Department of Education’s interpretation of the IDEA, which was informal and which was not based upon an express Congressional delegation of authority to elucidate the specific IDEA provision. Moreover, the Court pointed out that, even if greater deference were required, “it is doubtful whether that interpretation could withstand the sheer weight of the legal and factual support for the opposite conclusion.”

In addition, the Court rejected the Appellants’ contention that adoption of their interpretation

of the IDEA was necessary in order to avoid “constitutional entanglements” with the Due Process Clause of the United States Constitution. The Court concluded that procedural due process would not be violated by forbidding parents from having non-lawyer representation in hearings under IDEA, noting that, among other things, parties to an IDEA hearing are already provided with substantial procedural safeguards. The Court also gave significant weight to the strong governmental interest on the part of the State of Delaware in regulating the practice of law. In this regard, the Court emphasized that it “does not exercise its inherent authority to regulate the practice of law for the purpose of protecting the financial interests of the lawyer. Our role is to insure that the public will enjoy the representation of individuals who have been found to possess the necessary skills and training to represent others.”

Finally, the Court concluded that the record did not support Appellants’ assertion that parents and children will be denied access to “the only assistance available to them” if non-lawyers are not permitted to engage in representative functions in IDEA due process hearings. The record reflected that Delaware’s Community Legal Aid Society has in the past provided representation at IDEA due process hearings to parents and children whose cases satisfy the organization’s case acceptance criteria, and that the State Superintendent of Public Instruction and the district involved are required to provide information to parents regarding the availability of free or low-cost legal services which may be available. “If it could be demonstrated that an unmet need exists and that the local bar could not adequately respond, this Court would consider the adoption of a rule allowing lay representation in a certain limited class of cases.” (Citing, e.g., Supr. Ct. R. 57). “At the present, however, such a need has not been demonstrated.”

Accordingly, the Court affirmed the decision of the Board, concluding that the Appellants had engaged in the unauthorized practice of law in this State.

On June 4, 2001, the United States Supreme Court denied a petition for writ of certiorari filed by the Appellants, thereby allowing the Delaware Supreme Court’s decision to stand as written.